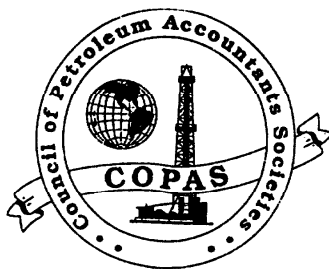


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November 3, 1997

Mr. David S. Guzy
Chief, Rules and Publications Staff
Minerals Management Service
Royalty Management Program
P O Box 25165 MS3021
Denver CO 80225-0165

RE: Designation of Payor Recordkeeping - 62 Fed. Reg. 42062 (August 5, 1997)

Dear Mr. Guzy:

The Council of Petroleum Accountant's Societies (COPAS) appreciates the opportunity to comment on the MMS' interim final rulemaking governing designation of payor. COPAS members have extensive experience with Royalty Management Program (RMP) rules and handle royalty valuation, allowances, adjustments, bills, audits, and other royalty matters on a regular basis. Therefore, we believe our comments will be beneficial in improving RMP processes for both the MMS and industry.

General Comments

MMS, States, and industry have jointly dealt with and solved a number of issues the past several years, but none of them were as contentious as this one seems to be. MMS rightfully points out in the preamble that they met with representatives from several industry associations and the States and that those representatives thought that, at least initially, the payor was in the best position to supply information to MMS. Unfortunately, those representatives were not aware of the many problems that would face payors in their efforts to comply with MMS' information request.

This interim final rule places a huge administrative cost burden upon industry. Three payors who voluntarily furnished the data based upon the January 9 letter estimated that they spent in excess of 2,500 hours (in total) to respond to the request. These payors were able to gather some of the data mechanically, but for many companies this effort will be totally manual. One payor estimates that it will cost approximately \$50,000 to \$100,000 to respond to the rule because they maintain ownership at a unit level instead of by tract within a unit.

COPAS National Office P.O. Box 1190 Denison, TX 75021-1190
Phone: (903) 463-5463 FAX: (903) 463-5473

Also, some new computer systems function more efficiently at the highest level of common ownership. Companies using these systems are probably maintaining ownership at a unit level because it is more efficient and cost effective. Payors that maintain ownership at the unit level know who they are paying on behalf of at a unit level, but they simply have no mechanical way to determine which owners are burdened by the federal lease.

Some companies are also very concerned about submitting data to the MMS that is, at best, fifty to sixty percent accurate. There are many reasons why the payor, as well as the lessee, would not have the data that the MMS is requesting. Those reasons are described below:

- It is common for an oil purchaser to pay taxes and royalties. If the purchaser is also paying all the working interest owners, then it would have most of the information MMS requests. If the purchaser is only paying the person he purchased from and that person is making further distribution to the other owners, then the purchaser/payor would not have the information the MMS requests.
- It is common for working interest owners with a small ownership to market their oil or gas through another working interest owner or the operator. In those situations, the working interest owner is generally paid its net revenue interest (working interest less royalties, overriding royalties, and taxes). The working interest owner knows who is paying him, but he does not know who is paying the royalties.
- Royalty payors may not have all the information being requested by MMS, such as taxpayer identification number and whether the payee is a working interest owner or lessee of record. Also, the address that the payor has is the remittance address which may be different from the owners address. Remittance addresses, such as lock boxes, should not be used by the MMS because the communication may have difficulty reaching the owner.
- Overriding royalty interests are generally created through farmouts. In the farmout agreement, the overriding royalty interest owner could have retained title to the lease, assigned title in the lease or a combination of assignment and retainage i.e. assigned shallow rights and retained deep rights. Unless the royalty payor has the ability to review the lease records, the standing of an overriding royalty owner is unknown.
- Unless the royalty payor has the lease records, it is difficult to determine who is responsible for minimum royalty payments.

While the above states why the data submitted may not be correct, we also have concerns about how MMS will validate, maintain, and use the data.

As to validation, logic and past experience tells us that the unsophisticated lessee will do one of two things when MMS tries to verify the information submitted to them. The lessee will either sign and return the validation to MMS without verifying the accuracy or the lessee will simply discard the MMS documents.

As to maintenance, royalty payors are very concerned about having to maintain the data. The data MMS is requesting may change monthly due to property acquisitions and dispositions, inheritances, and a change of marketing arrangements, etc. While MMS stated at the September 4, 1997, meeting that it was not their intent to request this massive amount of data from payors in the future, the interim rule certainly leaves that option open. MMS should maintain the data through the lessee filing of designation forms and not through the payors. Also, at the September 4, 1997 meeting, there was a reference made to a possible change to the Payor Information Form to include the lessee/working interest owner for whom a payor is remitting for. COPAS is opposed to this change as it would significantly increase the number of forms that would need to be filed on a monthly basis.

As to use, there have been reports of notices being sent to lessees when the payor is working with MMS to resolve a problem. If those reports are correct, then it would appear there is a disconnect when a payor is working with MMS and the computer system generates a notice to the lessee or a manual notice is sent to the lessee that needs to be corrected.

It would appear that there should be a way to comply with the provisions of RSFA that is less expensive and less burdensome to both MMS and industry. MMS has stated that the designations are needed to (1) comply with the law, and (2) to notify lessees when demands are issued. MMS also stated that approximately 300 appeals are filed each year in response to these demands. It would appear that if MMS established a procedure to address only those situations where appeals were filed, it would be more cost effective for both MMS and industry.

We have stated numerous reasons why it is difficult for payors and lessees to provide the information MMS requests. We wish we could say that we have the solution to the problem, but we do not believe there is a simple solution.

Some possible ways to gather data or inform lessees of the requirement to file designations are as follows.

- MMS states in the preamble that both BLM and MMS Offshore have data on lessees of record. MMS also said at the September 4 meeting that both BLM and MMS Offshore have said their data is not accurate. We believe that, at least, MMS Offshore has been provided data but because of all the lease activity they are probably behind on updating their information. Nevertheless, if MMS could take the BLM and MMS Offshore data and match it with the PIF database, it could be a starting place.
- Industry trade associations might be willing to send information to their members informing them of the designation requirement and information on how to file designations.

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- Industry companies need to be more proactive on this issue. One possibility is to send a letter to everyone they pay informing them of the designation requirement and a designation form.

These have not been discussed within industry, they are brainstorm ideas that would need further consideration by both MMS and industry.

Specific Comments

Section 210.55 - COPAS objects to this section in its entirety. This section implies that MMS may do another massive information request at some time in the future. If MMS intends to do that, industry will need to spend millions on systems to have the data available. IF MMS does not intend to do another massive request, there is no need for this section. On a lease basis, MMS has sufficient authority to obtain the information they require.

Section 281.52 (a)(1) - COPAS recommends this be changed to read "The AID number or BLM number for the lease."

Section 218.52 (a)(4)(i&ii) - COPAS recommends that percentages of ownership not be required. This would be an impossible effort for both MMS and lessees to maintain.

Section 218.52 (a)(5) - COPAS recommends the words "if known" be inserted after TIN and phone number. The lessee may not know this information.

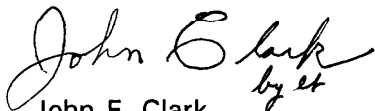
Section 218.52 (a)(6) - COPAS recommends that the words "if known "be inserted after phone number. We believe that a lessee would very rarely have the proper contact person.

Section 218.52 (a)(10) - COPAS recommends this be deleted. We see no reason why a copy of what is being submitted is required.

It is our understanding that the Royalty Policy Committee has established a subcommittee to review and make recommendations on this issue. COPAS recommends that MMS delay any enforcement action, under this Interim Final Rule until that subcommittee has had an opportunity to complete its review and make its recommendations.

COPAS appreciates MMS granting an extension of time on the comment period. We also appreciate the opportunity to comment on this rule. If you have any questions, please contact me at (405) 767-5044.

Sincerely,

A handwritten signature in black ink that reads "John E. Clark" with a stylized flourish at the end.

John E. Clark
Chairman, COPAS Federal Affairs Subcommittee

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It

cc:
Larry Monzingo
Bill Stone
Mary Stonecipher
COPAS Federal Affairs Subcommittee